

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-095487

11/29/2011

HON. JOHN R. DITSWORTH

CLERK OF THE COURT  
M. Brady  
Deputy

COBBLESTONE AT THE GROVES  
COMMUNITY ASSOCIATION

MARK A HOLMGREN

v.

STEPHEN EDWARDS, et al.

STEPHEN EDWARDS  
16030 S. 36TH  
PX AZ 85048

SUPER TRUST FUND, THE  
NO ADDRESS ON RECORD  
VINTAGE CONSTRUCTION L L C  
NO ADDRESS ON RECORD  
SOVEREIGN BANK NETWORK  
CAPITAL ALLIANCE DIVISION  
NO ADDRESS ON RECORD  
C I T GROUP, THE / EQUIPMENT  
FINANCING INC  
NO ADDRESS ON RECORD  
CHASE BANK U S A  
NO ADDRESS ON RECORD  
J ROGER WOOD

MINUTE ENTRY

Courtroom 203 – SEA

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9:05 a.m. This is the time set for oral argument on all outstanding motions. Counsel, Mark Holmgren and Lindsay O'Connor, appear on behalf of Plaintiff. Defendant, Stephen Edwards, appears on his own behalf. No one else appears.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is heard on the pending motions.

9:38 a.m. The court stands at recess.

9:41 a.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument continues.

10:19 a.m. The court stands at recess.

10:32 a.m. Court reconvenes with the parties and respective counsel present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument continues.

**IT IS ORDERED** taking the motions under advisement.

11:05 a.m. Hearing concludes.

**IT IS ORDERED** Defendant's exhibits 1, 2 and 3 are marked for identification and received in evidence.

**LATER:**

This morning, the Court heard a number of motions arising out of a dispute between a homeowners association and a homeowner.

The Court heard oral argument from both sides on all pending motions.

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- (1) Mr. Edwards's (Defendant's) first motion is a Motion that none of the arguments can be heard for the reason that he believes that the association did not have proper board approvals to file this litigation.

For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion is *denied*.

- (2) The Defendant has filed a motion to disqualify the law firm of Carpenter and Hazelwood and to remove Martin Smith as President of the Homeowners Association.

For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion is *denied*.

- (3) The Plaintiff/Counterdefendant filed a Motion to Strike two unsigned motions filed by the defendant (His response to renewed motion for partial summary judgment and a notice of non-compliance re: re-payment for property walls and request for judgment.) The argument is that both of the filings are not in compliant with Rule 11 because they are without a valid affidavit and signature.

For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion is *granted*.

- (4) The Plaintiff filed an Application in support of their request for attorney's fees and costs on March 4, 2011. There was no response to the request. The firm is requesting fees for its successful motion to Dismiss filed on behalf of Brown Management pursuant to A.R.S. § 12-341.01

For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion for Attorney's Fees is *granted*. The Court has reviewed the application for Attorney's fees and the attached Judgment and has signed the order.

- (5) The Plaintiff's Motion for OSC re: Contempt is withdrawn.

- (6) The next motion was Plaintiff's Motion for partial Summary Judgment as to the issue of Defendant Edwards "being" a member of the Board of Directors of the Homeowner's

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Association. The Court has reviewed the Motion for Partial Summary Judgment, the Response and Reply and listened to the arguments of counsel.

With respect to the Plaintiff's Motion for Summary Judgment, and pursuant to ARCP Rule 56, the Court believes that no issues of material fact remain in dispute and that the moving party is entitled to a judgment as a matter of law. See ARCP Rule 56.

The Court further finds that this is a circumstance where summary judgment is appropriate. See e.g. Orme School v. Reeves, 166 Ariz. 301, 802 P.2d 1000 (1990).

For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion for Summary Judgment is *granted*.

**The Court finds that the Defendant is NOT a member of the Board of Directors of the Cobblestone at the Groves Homeowners Association.**

- (7) The Plaintiff filed a Motion for Sanctions regarding discovery. The Plaintiff alleges that the Defendant has not filed responses to interrogatories and requests for production. Additionally, the defendant has refused to appear for a deposition. They are requesting sanctions as follows: Strike the answer and enter default judgment and dismiss the counterclaim of the Defendant.

The Court finds that Defendant has violated his obligations under the terms of ARCP Rule 34 (b) and 37 (a) (2) (b) and 37 (f) by failing to file interrogatories, produce responses and attend a deposition which the court feels can lead to the discovery of admissible evidence.

Therefore, the Motion to compel production is *granted*.

The Court also finds that the Defense has failed to satisfy their obligations under ARCP Rule 37(a) (4).

Therefore, the Plaintiff's request for a sanction is *granted*.

**IT IS ORDERED** striking the answer of the defendant, entering a Default Judgment against the Defendant, and dismissing the counterclaim of the defendant.

The Plaintiff's attorneys shall prepare an order for the Court to sign.

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- (8) The Defendant filed a motion to strike or dismiss the Lis Pendens filed against his property. The Court has reviewed the Motion to Dismiss the Lis Pendens, the Response and Reply and has listened to the evidence presented and the arguments of counsel.

The motion to strike the Lis Pendens is *denied*.

- (9) The Defendant filed a motion to compel the production of email from an internet service provider. He has failed to serve the internet provider. He also is asking for bank records from the members of the homeowner's board, the Plaintiff's law firm and the management company that services the association.

The Court has reviewed the Defendant's Motion to Compel, the production of financial documents, the Response and Reply and has listened to the evidence presented and the arguments of counsel.

For the reasons set forth in the Plaintiff's Arguments, the Defendant's Motion to Compel is *denied*.

- (10) Defendant Edwards' filed a Motion to Quash Subpoenas.

The Court has reviewed the Defendant's Motion to quash a subpoena re: the production of documents, the Response and Reply and has listened to the evidence presented and the arguments of counsel.

The Defendant's Motion to Quash is *denied*.

- (11) The plaintiff's filed a renewed Motion for Summary Judgment on the issue of Assessments. The Court has reviewed the Motion for Partial Summary Judgment as to the issue of Assessments, the Response and Reply and listened to the arguments of counsel.

With respect to the Plaintiff's Motion for Summary Judgment, and pursuant to ARCP Rule 56, the Court believes that no issues of material fact remain in dispute and that the moving party is entitled to a judgment as a matter of law. See ARCP Rule 56.

The Court further finds that this is a circumstance where summary judgment is appropriate. See e.g. Orme School v. Reeves, 166 Ariz. 301, 802 P.2d 1000 (1990).

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For the reasons submitted by the Plaintiff in the briefs and oral arguments, the Motion for Summary Judgment is *granted* as to the issue of unpaid assessments.

Pursuant to A.R.S. § 12-341, the Plaintiff is also awarded their Attorney's fees and costs and they are ordered to submit an application for attorney's fees and costs.

Counsel for the Plaintiff is directed to submit a proposed form of Judgment on the unpaid assessments.

- (12) The defendant filed an expedited motion for declaratory relief pursuant to A.R.S. § 12-1831. The Court has reviewed the Motion. Plaintiff's counsel orally responded. The Court has listened to the arguments of counsel.

The Court finds that the Defendant has failed to meet his burden of proof under this statute.

Accordingly, the motion for Declaratory Judgment is *denied*.

**NOTE: ALL COURT PROCEEDINGS ARE RECORDED BY AUDIO METHOD AND NOT BY A COURT REPORTER. ANY PARTY MAY REQUEST THE PRESENCE OF A COURT REPORTER BY CONTACTING THIS DIVISION THREE (3) COURT BUSINESS DAYS BEFORE THE SCHEDULED HEARING.**

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.